There are a good many differences between the parties on which the Court would have to make findings of fact if evidence was taken, but the essential facts now for consideration which are common to both sides are that the plaintiff was a monthly tenant of the defendant for some years. By April 1950 the premises became so seriously dilapidated that the Kuala Kangsar Town Board issued a prohibitory order against the use of the building on 27th April, 1950.

In July the Town Board served notice on the plaintiff to vacate the premises and the plaintiff has been convicted and fined in the Magistrate's Court for not complying with this notice.

The plaintiff asks for :—

(a) a declaration that he is the lawful tenant of shop house bearing No. 8, Jalan Kangsar, Kuala Kangsar;

(b) that the plaintiff is entitled to occupy the said shop house after the necessary repairs had been done to the said shop house;

(c) an injunction restraining the defendant from letting out the said shop house bearing No. 8, Jalan Kangsar, Kuala Kangsar, to anyone than the plaintiff and from selling the said shop house free of the tenancy of the plaintiff.

As regards these three prayers it must be borne in mind that the plaintiff was only a monthly tenant, with only a monthly tenant's common law rights and privileges, except for the protection extended to him by the Control of Rent Ordinances. As it is these Ordinances curtail to a considerable extent a landlord's common law rights on the grounds of public policy. It has more than once been stated and held by the Courts that it is wrong to go beyond the strict letter of these emergency provisions and further curtail a landlord's common law rights.

Even if all the plaintiff's allegations were substantiated, I should feel, applying this principle, that it would be wrong at this stage to declare (b) and to grant (c). He is clearly asking for more than any monthly tenant is entitled to under the common law and it would be straining, in my opinion, the provisions of the local law to say that they have extended such rights to him, at any rate, in the circumstances of this case.

If, at some future date, the defendant wrongfully and illegally denies to the plaintiff the use of these premises, it will then be the time for the plaintiff to bring an action for damages or such other relief as he may be advised.

As regards (a), the fact that the plaintiff was defendant's tenant is not in dispute, but it appears to me that the action of the Town Board in closing the premises and evicting the plaintiff has in fact put an end to the plaintiff's monthly tenancy.

I consider that this reason alone would be sufficient not only for refusing (a), but also (b) and (c).

I consider the plaintiff's claim misconceived and it is dismissed with costs.

Order accordingly.

SOH EDDIE v. TJHIN FEONG FAH.

[Orig. Civ. Juris. (Rogers, J.) June 4, 1951]

[Singapore — Suit No. 61 of 1951]

Husband and Wife — Purchase of property by husband in wife's name — Presumption of gift — Rebuttal.

The facts appear sufficiently in the judgment.

Held, that the presumption of a gift to a wife may be rebutted by showing that at the date of the purchase there was no present intention to benefit the wife. There must be evidence of a contemporaneous declaration by the husband to the contrary. Subsequent declarations are not sufficient to rebut presumption.

Requirements of a Chinese marriage considered.

Cases referred to :—

(1) *Six Widows' Case (Choo Eng Choon v. Neo Chan Neo & Ors.)* 12 S.S.L.R. 120.

(2) *Cheang Thye Phin v. Tan Ah Loy* (1920) A.C. 369.

(3) *Woon Kai Chiang v. Yeo Pak Yee & Ors.* (1926) S.S.L.R. 27.

(4) *Er Gek Cheng v. Ho Ying Seng* (1949) M.L.J. 171.

CIVIL SUIT.

H. R. Wilson for the plaintiff.

Eric Choa for the defendant.

Rogers, J. : — The plaintiff and the defendant made each other's acquaintance in 1927. He was unmarried and she a widow. They were both young and mutually attracted and within a week had begun to live together. For this purpose the plaintiff rented a room in Silat Road. During the course of the next 12 months they adopted a small girl, and this girl has made her home with them from that time until the date of her marriage in 1950. They both looked on her as a daughter, photographs were taken of the 3 of them together, and for the wedding the invitations were sent out in the name of both plaintiff and defendant as Mr. and Mrs. Soh Eddie. During the years 1927 — 1938, the family lived at various addresses,

finishing up at 55 Tiong Bahru Road at which address the defendant still lives. There were no children of the union, and after 7 years of childlessness, the plaintiff in 1934 married a woman named Belle Lim. This union only lasted 2 months. He next took as his mistress in the same year, one Betty Tan, to whom the defendant introduced him and by whom he had six children. In 1942 he took a further mistress, one Beh Chih Sing, and by her he had 3 more children. The defendant has said that he visits these other two, but spends most of his time with her, and in support of her statement she has produced a ration card. Such was the plaintiff's domestic position up to the time of the marriage of the adopted child on which occasion incidentally she was described by them as their eldest daughter. After this, their relations began to deteriorate, and in November last a quarrel ensued which resulted in this action.

Before continuing to deal with the facts in this case, I now consider what was the position of the parties during this long association, as regulated and defined by the legal authorities which have been cited to me. The earliest of these is the one known as the *Six Widows' Case*[1] in which it was held that the Chinese being a polygamous race, the Courts of the Straits Settlements would recognise polygamous unions for purposes of succession and legitimacy among native inhabitants whose religion permits polygamy. It is worth noting that there was nothing in this case justifying the proposition that the Court on that occasion decided that a ceremony was essential. I mention this, in view of the fact that there was in fact no ceremony of any kind when the plaintiff and the defendant in the present case first decided that they wished to live together.

The next decision cited to me was one of the Privy Council in the case of *Cheang Thye Phin v. Tan Ah Loy*[2]. In that case it was held that a ceremony of marriage was necessary to constitute the relation of principal wife or "tsai". In the case of a 'tsip or secondary wife, however, no such ceremony was essential. That is the important feature of this case, and what it amounts to is that a woman may prove herself to be a 'tsip or secondary wife whether or not the performance of a ceremony has been proved. The next authority on this subject is that of *Woon Kai Chiang v. Yeo Pak Yee & Ors.*[3]. In that case it was laid down that a Chinaman may contract a legal union with a 'tsip before marrying a 'tsai. On this point Deane, J. uses the following words at page 52 :—

> "If however it should be held that in the absence of a ceremony she cannot be considered his tsai, in my opinion she is at least a chip. As I have pointed out, this was no casual union, and the law holds that from a permanent union certain status attaches to the woman and her off-spring. T' at being so, I could never accede to what I consider tne monstrous proposition that by contracting a subsequent marriage the man could take away this status from his partner in the union and render his children illegitimate. No authority has been advanced for such a proposition, nor do I think it possible that any will be found to support a proposition so contrary to all ideas of natural justice."

These words are to my mind of considerable importance in the case now before me, as it is clear that some ceremony was performed on the occasion of the plaintiff's union with Belle Lim. It is most probable therefore that Belle Lim became in 1934 the plaintiff's tsai. Nothing however in this union could take away his right to have contracted a legal union before this date, or the defendant's right to prove that he in fact contracted it.

Lastly there is a recent decision of the present Chief Justice, Singapore in the case of *Er Gek Cheng v. Ho Ying Seng*[4]. He says at page 173 :—

> "In the case of Chinese marriages, in most cases, the ceremonies regarded as essential at the time of the Six Widows' Case have disappeared and there remains a simple form of consensual marriage, quite in conformity with the requirements of the Canon Law.
>
> Therefore, if we adopt this conception we have a rational doctrine which can be applied in all cases which have not been especially provided for by statute.
>
> With these simple legal requirements the difficulties that have troubled the Courts have been merely questions of evidence. The burden of proof is upon whoever alleges the status of T'sip to have existed. What must be proved in order to discharge that burden? In most cases there is some sort of a ceremony, and there is recognition of the t'sip as a member of the husband's family. But this is evidentiary only. It is not essential to the acquisition of the status of t'sip. A formal contract in writing would be conclusive. If the parties were to live as such publicly so as to acquire the reputation of being man and t'sip that would also be evidence that the status had been acquired. On the other hand, I do not consider that mere co-habitation for a considerable period would by itself be sufficient evidence."

Applying those words to the case before me, I have to consider whether the defendant has discharged the onus of proof which she must discharge to have her position established as 'tsip. In my opinion she has succeeded in so doing. For seven years from 1927—1934, she lived with this man, before any other woman came on the scene; being childless they adopted the little girl Nonis, which is an even stronger proof of a consensual marriage than the birth of a child in the ordinary way; pictures have been produced of the family of 3 taken at various stages of Nonis' childhood, and finally there were the wedding invitations sent out in both their names, and Nonis described therein as their eldest daughter. Could any lawfully married father and mother have done more? Or to quote the

words of the Chief Justice in *Cheang Thye Phin v. Tan Ah Loy*[2] which received the approval of the Privy Council.

"Such was no temporary liaison, nor its object a mere casual mistress. Whether or not her effort to prove a ceremony was true matters not. I think that the decision that the woman was a 'tsip was right and as such she is entitled to participate in the intestate estate."

It follows that the defendant in this case has abundantly demonstrated her right to be called a 'tsip. Indeed, according to the view expressed by Deane, J. in the case of *Woon Kai Chiang v. Yeo Pak Yee*[3], she was in fact a 'tsai as hers was the first union. This view is reinforced by the words "The legal requirements for marriage with a 'tsai and a 'tsip are I think the same" which occur in the judgment in *Er Gek Cheng v. Ho Ying Seng*[4], and the inference being that no ceremony is necessary in either case. I do not decide here which of the two roles the defendant filled in this case, but I am perfectly satisfied that when she says that the plaintiff is her husband, she correctly sums up the position.

Having decided this point I now refer back to the facts which have directly led up to this action. Following the Japanese Occupation of Singapore in February 1942, the plaintiff and his partner Chew Kiang Siong began to amass a considerable fortune. With this fortune, they decided to purchase land, and the first of these purchases was that of 10, 12, 14 and 16 Lewis Road in September 1943. The plaintiff acquired 14 and 16 and had them conveyed into the name of the defendant for fear of possible confiscation. The purchase price was $49,000 and although in his wife's name (as such I find her to be) the plaintiff managed the property himself, collecting the rents through his partner, and paying for the necessary repairs. In the same month the 2 partners together purchased 23 and 25 Adam Road, and each had his half share conveyed into his wife's name. The purchase price was $65,000 and the plaintiff found half of this amount. Other properties were also bought, but these 2 were the only ones conveyed into defendant's name. He has said that he found all the money necessary for these purchases, but she has said that some was hers given to her by plaintiff previously. Both sets of title deeds were taken by him to the care of defendant. In August 1950 the plaintiff demanded the return of the property and she promised to consider it after Nonis' marriage. Unfortunately after that event, relations between them rapidly deteriorated, and by November this 23 years association had come to an end. This action is the result.

The plaintiff claims a declaration that the properties were purchased by him and are his property and are held by the defendant in trust for him. He further claims an order directing the defendant to convey the property to him, or alternatively an order vesting it in him.

As the relations between the parties were those of husband and wife, there is a presumption that a gift was intended. The plaintiff must therefore rebut this presumption if he is to succeed. This presumption moreover may exist notwithstanding that the husband has actually received the income from the property. It may be rebutted by showing that there was no present intention to benefit or by a contemporaneous declaration by the alleged donor, but declarations by him subsequent to the purchase, if they are not so connected with it as to be reasonably regarded as contemporaneous cannot affect the presumption. Otherwise having made a gift he would be able to take it away.

Now in this case the plaintiff's evidence is to the effect that when he bought this property he had told defendant he was going to put it in her name for fear of Japanese confiscation. He says now that he had no intention of making her a gift of this property, and yet he took both sets of Title Deeds to her in 1946, long after all fear of confiscation had passed away. And there she has them still. Further he has allowed over 7 years to pass, before ever making any claim. This is as far as he can go, and I feel bound to hold that he has failed to rebut the presumption that he had intended to make the defendant a gift. Far more likely is her evidence that he told her it would save trouble in the event of his death if he conveyed them into her name, with the intention that she was to have them as a widow. At that time they had lived together for 6 years, mostly on a small income, and now that prosperity had arrived, I consider that the presumption still stands that in that prosperity he intended her to share, and was taking these steps to ensure that in the event of his death, she should so share. As my findings amount to the conclusion that these properties were made over as a gift, it is unnecessary to consider whether the plaintiff found the purchase money entirely, or in part.

I give judgment for the defendant with costs.

Judgment for the defendant.